

REBECCA ELAINE GATES-
COLBERT,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM AND ORDER

This matter is before the Court on movant’s motion for review of sentence pursuant to 18 U.S.C. § 3742. Section 3742, however, does not authorize this Court to review or correct a sentence under any circumstances. The statute permits a defendant to appeal a sentence “imposed in violation of law” or “imposed as a result of an incorrect application of the sentencing guidelines.” 18 U.S.C. § 3742(a). And the statute permits the court of appeals to remedy a sentence when appropriate. No provision of the statute permits a district court to modify or correct a sentence. As such, the motion must be denied.

Before denying the motion, however, the Court will allow movant to inform the Court whether she wishes to recharacterize the motion as either a notice of appeal or a motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255. If movant wishes to receive relief from this Court, a § 2255 motion is her only potential avenue.

Accordingly,

IT IS HEREBY ORDERED that movant shall, no later than twenty-eight (28) days from the date of this order, inform the Court in writing whether she wishes to recharacterize her motion as either a notice of appeal or a motion under § 2255, but not both.


IT IS FURTHER ORDERED that the Clerk shall mail to movant a copy of the Court's criminal notice of appeal form and a copy of the Court's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 form.

IT IS FURTHER ORDERED that if movant chooses to recharacterize the motion as a notice of appeal, she must fill out the notice of appeal form and return it to the Court within twenty-eight days of the date of this Order.

IT IS FURTHER ORDERED that if movant chooses to recharacterize the motion as a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255, she must fill out the § 2255 form and return it to the Court within twenty-eight days of the date of this Order.

IT IS FURTHER ORDERED that if movant fails to timely respond to this Order, this action will be dismissed.

Dated this 7th day of December, 2011.


STEPHEN N. LIMBAUGH, JR.
UNITED STATES DISTRICT JUDGE